

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

RAJENDRA D. BADGAIYAN, M.D.,

Plaintiff,

v.

**ANTHONY J. PRINCIPI, Secretary,
Department of Veterans' Affairs; President
and Fellows of HARVARD COLLEGE; and
Grace J. Mushrush, M.D.,**

Defendants

Case No. 04-12031 PBS

**DEFENDANT PRESIDENT AND FELLOWS OF HARVARD COLLEGE'S
MOTION TO DISMISS COUNTS I, II, III and IV OF PLAINTIFF'S AMENDED
COMPLAINT**

Defendant President and Fellows of Harvard College ("Harvard University") moves to dismiss Counts I, II, III and IV of the Plaintiff's Amended Complaint and Demand for Jury Trial (the "Complaint") filed by Rajendra D. Badgaiyan, M.D. ("Plaintiff") in the above-captioned case. For the reasons set forth in its Memorandum in Support, filed herewith, Counts I, II and III must be dismissed pursuant to Fed. R. Civ. P. 12(b)(1), or in the alternative 12(b)(6), due to Plaintiff's failure to allege and file an administrative charge with the Equal Employment Opportunity Commission ("EEOC") against Harvard University and thus exhaust the Title VII statutory prerequisites of 42 U.S.C. 2000e-5. Count IV of the complaint must be dismissed against Harvard University pursuant to Fed. R. Civ. P. 12(b) (6) for failure to state a claim upon which relief may be granted. Count V, alleging interference with advantageous relations, Count VI for defamation, and Count VII alleging intentional infliction of emotional distress

relate another defendant, and the Complaint should accordingly be dismissed in its entirety as to Harvard University pursuant to Fed. R. Civ. P. 12(b) (1) and (6).

Respectfully submitted,
Defendant, President and Fellows of
Harvard College,
By their attorneys,

/s/ Daniel S. Field
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Daniel S. Field, Esq. (BBO No. 560096)
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Date: April 14, 2005

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon counsel for the plaintiff, Paul H. Merry, Esq., Law Office of Paul H. Merry, Esq. 44 School Street, 10th Floor, Boston, MA 02108, by first-class U.S. mail this 14th day of April, 2005.

/s/ Daniel S. Field
Daniel S. Field